IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 1203 of 2007 (O&M)
Date of decision : 24.4.2007

Sudarshan Kumar Khanna & Ors.

...Appellants.

Versus

Ram Sarup & Anr.

...Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.A.K. Chopra, Sr. Advocate with
Mr. Aashish Chopra, Advocate
for the appellants.

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VINOD K. SHARMA, J. (ORAL)

The present regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiffs-respondent for permanent injunction was decreed.

In the plaint the plaintiffs have set up a case that Khasra No. 1281(4-9) was owned by the proprietors including the plaintiffs but the same was a public passage meant for the user of the residents of the adjoining village for the last more than 100 years, whereas the residential plot bearing Khasra No. 1277(0-10) was owned and possessed by the plaintiffs and khasra No. 1278 was owned by the defendants, which was abutting the said passage on the northern side. It was claimed that the appellants defendant have encroached upon the passage as well as on the plot of the plaintiffs bearing khasra No. 1277 by raising their wall in the land illegally, unauthorisedly in the absence of the plaintiffs. It was further

pleaded that part of the public passage is also encroached upon. The suit was contested on the plea that khasra No. 1281 was admittedly a public street, therefore, the jurisdiction of the Civil Court was barred in view of the provisions of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961. It was further claimed that no encroachment has been done by the defendants and the construction raised by the defendants was by getting the plan sanctioned from the Municipal Council. It was further the case of the defendants appellant that because the Municipal Council was not made a party, therefore, the suit was not competent.

The learned Courts below on appreciation of evidence brought on record have recorded a positive finding that the appellants have encroached upon the part of the public passage bearing khasra No. 1281 as well as part of khasra No. 1277.

The learned Senior counsel for the appellants has challenged the finding recorded by the learned Courts below on the ground that the passage still exists and furthermore the report of the Collector which was duly exhibited on record was not taken into consideration. It was also the case of the appellants that reliance on site plan Ex.P4 and Ex.P5 by the learned Courts below was not correct as the same could not be used to determine the area owned and possessed by the appellants-defendant. It was further case of the appellants defendant that in absence of demarcation having been carried out by the revenue officer as suggested, finding regarding encroachment could not have been recorded. It is also contended by the learned senior counsel for the appellants that the aks sajara, which was placed on record by the defendants, was not looked

into by the learned Courts below and, therefore, findings recorded by the learned Courts below cannot be sustained.

I have heard the learned senior counsel for the appellants and find that there is no scope to interfere with the concurrent finding of fact recorded by the learned Courts below holding that the appellants have encroached upon the plot of the respondents plaintiff and also the public street.

No question of law much less substantial question of law arises in this regular second appeal for consideration by this Court.

Dismissed.

24.4.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**